IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.L.P..No. 300 of 2007()

ST.44/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT I, NEDUMANGAD

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PETITIONER/COMPLAINANT:

SHAJAHAN, SHAJINA MANZIL,
KANYAKULANGARA, VEMBAYAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR
SRI.P.P.BIJU

RESPONDENTS/ACCUSED & STATE:

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1. SYAM, S/O.R.K.SUNDARAM,
V.P.VI/297, ANAND BHAVAN,
KUNNUVILA, ANGAVILA,
VAKKOM P.O., ATTINGAL.

2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM..

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU-R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO.300 OF 2007

Dated this the 20th day of June, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T. No.44 of 2004 on the file of the Judicial First Class Magistrate Court I, Nedumangad.

2. The complaint was filed on the allegation that the accused - first respondent herein borrowed from the complainant an amount of Rs.65,000/- and issued Ext.P1 cheque in discharge of the said liability and that when the cheque was presented to the bank for encashment, the same was dishonoured for want of sufficient funds in the account of the accused. After complying with the statutory provisions and on finding that the notice sent was unclaimed, the complaint was filed. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts. P1 to P7 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction between himself and the complainant, the accused

stated that he was never personally indebted to the complainant. He further stated that he gave Ext.P1 cheque to the complainant as security for an amount of Rs.65,000/- which his friend, one Fazel had borrowed from the complainant. The accused further stated that the said Fazel repaid the entire amount by issuing three cheques in favour of the complainant for a total amount of Rs.63,000/- and Rs.2000/- in cash. The accused also stated that when he approached the complainant for return of the cheque given by him, the accused demanded a further sum of Rs.5000/- as interest and as Fazel refused to pay the additional amount, the complainant misused Ext.P1 cheque and filed the complaint. To prove his case, the accused was examined as DW.1 and Fazel was examined as DW.2 and Exts.D1 to D4 were produced. On considering the entire evidence, the trial court found that the case set up by the complainant that he himself had given the amount to the accused was not based on any evidence and that the complainant had admitted in cross-examination that he had received an amount of Rs.63,000/- from Fazel. The trial court also found that the case set up by the accused was more probable and hence acquitted him.

3. Considering the entire facts and circumstances of the case, this Court is of the view that the finding entered by the trial court is based on

evidence and there are no compelling circumstances to re-appreciate the evidence. Hence, the impugned judgment requires no interference by this Court.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/